

CHAPTER 3.56

(3417-6/99, 3546-4/02, 3751-11/06)

CITY OF HUNTINGTON BEACH SPECIAL TAX FINANCING IMPROVEMENT CODE

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Article 1 **General Provisions**

3.56.010 Short title. This ordinance shall be known and may be cited as the “City of Huntington Beach Special Tax Financing Improvement Code,” and shall be referred to herein as the “Code”.

3.56.020 Municipal and State affairs; authority conferred by Code; applicability of laws.

This Code is adopted pursuant to Section 500 of Article V of the Charter of the City of Huntington Beach. In proceedings had pursuant to this Code which are a municipal affair, any general laws referred to in this Code are deemed a part of this Code.

In the event that any proceeding had pursuant to this Code shall be adjudged a state affair, it is declared to be the intention that the proceedings were had pursuant to any applicable general law or laws.

This Code provides an alternative method of financing certain public and private capital facilities and municipal services. The provisions of this Code shall not affect or limit any other provisions of law authorizing or providing for the furnishing of facilities or services, or the raising of revenue for these purposes. The City may use the provisions of this Code in conjunction with the Mello-Roos Community Facilities Act of 1982, as amended (commencing with Section 53311 of the California Government Code) (the “Act”), or any other method of financing part or all of the cost of providing the authorized kinds of public and private capital facilities and municipal services. Actions not otherwise addressed in this Code shall be otherwise governed by the provisions of the Act.

This Code shall be deemed to provide a complete, additional and alternative method for actions authorized hereby and shall be regarded as a supplemental and additional to the powers conferred by other laws, including the Act.

3.56.030 Conflicting provisions; severability. Any provision in this Code which conflicts with any general law or act shall prevail over the other such provision in connection with any proceedings taken pursuant to this Code.

In the event any portion of this Code shall be declared illegal, unenforceable or unconstitutional, such provision shall be deemed severable from the rest of the provisions of this Code.

3.56.040 Actions or determinations by local agency. The local agency may take any actions or make any determinations which it determines are necessary or convenient to carry out the purposes of this Code and which are not otherwise prohibited by law.

3.56.050 Liberal construction of chapter; error, irregularity, neglect or omission.

This Code shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this Code, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service, shall void or invalidate such proceeding or any levy for the costs of such facility or service.

3.56.060 Failure to receive notice, resolution, order or other matter not affecting proceedings.

The failure of any person to receive a notice, resolution, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under the Code, or prevent the legislative body from proceeding with any hearing so noticed.

3.56.070 Definitions. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this Code.

- (a) "Act" means the Mello-Roos Community Facilities Act of 1982, as amended (commencing with Section 53311 of the California Government Code).
- (b) "City" means the City of Huntington Beach.
- (c) "City Council" means the City Council of the City of Huntington Beach.
- (d) "City Clerk" or "Clerk" means the City Clerk of the City of Huntington Beach.
- (e) "Community facilities district" or "district" means a legally constituted governmental entity established pursuant to this Code and the Act for the sole purpose of financing facilities and services.
- (f) "Cost" means the expense of constructing, installing or purchasing the public facility and of related land, right-of-way, easements, including incidental expenses, and the cost of providing authorized services, including incidental expenses.
- (g) "Debt" means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts.
- (h) "Incidental expense" includes all of the following:
 - (1) The cost of planning and designing public facilities to be financed pursuant to this Code, including the cost of environmental evaluations of those facilities.
 - (2) The costs associated with the creation of the district, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the district.
 - (3) Any other expenses incidental to the construction, completion, and inspection of the authorized work.
- (i) "Landowner," "owner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the city clerk. Notwithstanding the foregoing, "landowner", "owner" or "owner of land" means, with respect to any land which is the subject of a condemnation action, the person entitled to possession of the land pursuant to such condemnation action, or with respect to land to which

the City or Redevelopment Agency has fee title, the person having a leasehold interest in the land for a term exceeding 40 years. The legislative body has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purposes of this Code. A public agency is not a landowner owner or owner of land for purposes of this Code, unless the land owned by a public agency would be subject to a special tax pursuant to Section 3.56.040 or unless the public agency has acquired possession to the land through a condemnation and has made the certification required in Section 3.56.300.

- (j) “Legislative body” means the legislative body or governing board of any local agency, and with respect to the City means the City Council.
- (k) “Local agency” means any city or county, whether general law or chartered, special district, school district, joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or any other municipal corporation, district, or political subdivision of the state.
- (l) “Rate” means a single rate of tax or a schedule of rates.
- (m) “Redevelopment Agency” means the Redevelopment Agency of the City of Huntington Beach.
- (n) “Services” means the provision of categories of services identified in Section 3.56.110. “Services” includes the performance by employees of functions, operations, maintenance, and repair activities. “Services” does not include activities or facilities identified in Section 3.56.120.

Article 2

Purpose Of District

3.56.100 Initiation of proceedings to establish district upon adoption of certain local goals and policies.

- (a) The City may initiate proceedings to establish a district pursuant to this Code only if it has first considered and adopted local goals and policies concerning the use of this Code, except in the case of districts being formed pursuant to a development agreement between the City and a qualified developer and or the Redevelopment Agency and a qualified developer. The policies shall include at least the following:
 - (1) A statement of the priority that various kinds of public facilities shall have for financing through the use of this Code, including public facilities to be owned and operated by other public agencies, including school districts.
 - (2) A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.
 - (3) A statement concerning steps to be taken to ensure that prospective property purchasers are fully informed about their taxpaying obligations imposed under this Code.
 - (4) A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to this Code.

3.56.110 Establishment of community facilities district to finance certain services. A community facilities district may be established under this Code to finance any one or more of the following types of services within an area:

- (a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.
- (b) Fire protection and suppression services, and ambulance and paramedic services.
- (c) Recreation program services, library services, maintenance services for elementary and secondary school sites and structures, and the operation and maintenance of museums and cultural facilities. Bonds may not be issued pursuant to this Code to fund any of the services specified in this subdivision. A special tax may be levied for any of the services specified in this subdivision only upon approval of the voters as specified in subdivision (b) of Section 53328 of the Act. However, the requirement contained in subdivision (b) of Section 53328 of the Act that a certain number of persons have been registered to vote for each of the 90 days preceding the close of the protest hearing does not apply to an election to enact a special tax for recreation program services, library services, and the operation and maintenance of museums and cultural facilities subject to subdivision (c) of Section 53326 of the Act.
- (d) Maintenance of streets, landscaping, street lighting, parks, parkways, and open space.
- (e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, and sandstorm protection systems.
- (f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms “remedial action” and “removal” shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term “hazardous substance” shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.
- (g) Maintenance of, and the provision of repair and replacement reserves for, any other public improvement not specifically listed in the preceding clauses (a) through (f), the construction, installation, expansion, improvement or rehabilitation of which may be financed under Section 3.56.120 or Section 3.56.130 of this Code. (3546-4/02)

3.56.120 Additional financing powers of district; purchase, construction, expansion, improvement, rehabilitation, or planning and design work of real or tangible property. A community facilities district may also finance the purchase, construction, installation expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1 of the Act, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency. For example, a community facilities district may finance facilities, including, but not limited to, the following:

- (a) Local park, recreation, parkway, open-space facilities, beach maintenance facilities, beach access facilities and parking facilities adjacent or accessible to such facilities.
- (b) Elementary and secondary school sites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

- (c) Libraries.
- (d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this Code shall not be used to pay these insurance costs.
- (e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. "Public utility" shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.
- (f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes described in subdivision (e) of Section 3.56.110.
- (g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease purchase contract, or certificate of participation used to finance authorized district facilities.
- (h) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (f), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.
- (i) (1) A district may also pay for the following:
 - (A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).
 - (B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has

proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

- (2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property which may be subject to the tax, in which case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels on which the legislative body finds that the buildings to be worked on, repaired, reconstructed, or replaced, pursuant to this subdivision, are located or were located before being damaged or destroyed by the earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) (1) A district may also pay for the following:

- (A) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this subparagraph.
- (B) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

3.56.130 Additional district financing powers. Pursuant to Section 3.56.120, a community facilities district may also finance the acquisition improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes described in subdivision (f) of Section 3.56.110.

3.56.140 Revolving Fund for cleanup of hazardous substances; withdrawal of funds.

- (a) In connection with the financing of services and facilities pursuant to subdivision (f) of Section 3.56.110 and Section 3.56.130, the legislative body may establish a revolving fund to be kept in the treasury of the district. Except as provided in subdivision (b), moneys in the revolving fund shall be expended solely for the payment of costs with respect to those services and facilities. The revolving fund may be funded from time to time with moneys derived from any of the following:
 - (1) Proceeds of the sale of bonds issued pursuant to Article 5 (commencing with Section 5-1), notwithstanding any limitation contained in Section 3.56.410.
 - (2) Any taxes or charges authorized under this Code.
 - (3) Any other lawful source.
- (b) Subject to the provisions of any resolution, trust agreement or indenture providing for the issuance of district bonds for the purposes set forth in Section 3.56.130, the legislative body may withdraw money from the revolving fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to accomplish the purposes for which the revolving fund was established. Any moneys withdrawn from the revolving fund shall be used to redeem bonds of the district issued for the purposes set forth in Section 3.56.300 or shall be paid to taxpayers in the district in amounts which the legislative body determines.

3.56.150 Liability; removal or remedial action; hazardous substances released or threatened to be released.

- (a) Any responsible party as defined by subdivision (a) of Section 25323.5 of the Health and Safety Code shall be liable to the district for the costs incurred in the removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. The amount of the costs shall include interest on the costs accrued from the date of expenditure. The interest shall be calculated based on the average annual rate of return on the district's investment of surplus funds for the fiscal year in which the district incurred the costs. Recovery of costs by a community facilities district under this section shall be commenced before or immediately upon completion of the removal or remedial action, and payments received hereunder by the district shall be deposited in the revolving fund in accordance with Section 3.56.140.
- (b) To expedite cleanup, this section is intended to provide local jurisdictions an alternative method of financing the cost of removal or remedial action for the cleanup of any hazardous substance through the issuance of voter-approved limited obligation bonds. The provisions of this section shall not affect or limit the provisions of any other law establishing the liability of any person for, or otherwise regulating, the generation, transportation, storage, treatment, or disposal of hazardous substances. The scope and standard of liability for any costs recoverable pursuant to Section 3.56.150 shall be the scope and standard of liability set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any other provision of state or federal law establishing responsibility for cleanup of hazardous waste sites.

3.56.160 Ordinance; local agency contribution; purposes. At any time either before or after the formation of the district, the legislative body may provide, by ordinance, that for a period specified in the ordinance, the local agency may contribute, from any source of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of the revenues for the purposes set forth in the ordinance, limited to the following: the acquisition or construction of a facility, the acquisition of interest in real property, or the payment of debt service with respect to the financing of either, the provision of authorized services, and the payment of expenses incidental thereto. The contribution shall not constitute an indebtedness or liability of the local agency.

3.56.170 Joint community facilities agreement or joint exercise of powers agreement.

- (a) A community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the district, or services to be provided by an entity other than the agency that created the district, or any combination, only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to this section.
- (b) At any time prior to the issuance of bonds by the district, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to this section and Sections 53316.4 of the Act and 53316.6 of the Act or into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code to exercise any power authorized by this Code with respect to the community facilities district being created or changed if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity.
- (c) Notwithstanding Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code, a contracting party may use the proceeds of any special tax or charge levied pursuant to this Code or of any bonds or other indebtedness issued pursuant to this Code to provide facilities or services which that contracting party is otherwise authorized by law to provide, even though another contracting party does not have the power to provide those facilities or services.
- (d) Notwithstanding subdivision (b), nothing in this section shall prevent entry into or amendment of a joint community facilities agreement or a joint exercise of powers agreement, after the issuance of bonds by the district, if the new agreement or amendment is necessary, as determined by the legislative body, for either of the following reasons:
 - (1) To allow an orderly transition of governmental facilities and finances in the case of any change in governmental organization approved pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6).
 - (2) To allow participation in the agreement by a state or federal agency that could or would not otherwise participate, including, but not limited to, the California Department of Transportation.
- (e) Notwithstanding any other provision of this Code, no local agency which is party to a joint exercise of powers agreement or joint community facilities agreement shall have primary responsibility for formation of a district or an improvement area within a district, or for an extension of authorized facilities and services or a change in special taxes pursuant to Article 3, unless that local agency is one or more of the following:
 - (1) A city, a county, or a city and county.
 - (2) An agency created pursuant to a joint powers agreement that is separate from the parties to the agreement, is responsible for the administration of the agreement, and is subject to the notification requirement of Section 6503.5.
 - (3) An agency that is reasonably expected to have responsibility for providing facilities or services to be financed by a larger share of the proceeds of special taxes and bonds of the district or districts created or changed pursuant to the joint exercise of powers agreement or the joint community facilities agreement than any other local agency.

3.56.180 Special tax; property acquired by public entity through negotiated transaction or by gift or devise. If property not otherwise exempt from a special tax levied pursuant to this

Code is acquired by a public entity through a negotiated transaction, or by gift or devise, the special tax shall, notwithstanding Section 53340 of the Act, continue to be levied on the property acquired and shall be enforceable against the public entity that acquired the property. However, even if the resolution of formation that authorized creation of the district did not specify conditions under which the obligation to pay a special tax may be prepaid and permanently satisfied, the legislative body of the local agency that created the district may specify conditions under which the public agency that acquires the property may prepay and satisfy the obligation to pay the tax. The conditions may be specified only if the local agency that created the district finds and determines that the prepayment arrangement will fully protect the interests of the owners of the district's bonds.

Notwithstanding any other provision of this Code, any public agency other than a city, county or school district may subject property owned by it to the levy of special taxes, if it shall certify to the City Council: (a) its agreement to do so, (b) that it intends to dispose of such property by transfer to a non-governmental agency at some time in the future, and (c) that it agrees to cooperate in the sale of property if necessary to obtain funds to pay any special taxes levied upon such property.

3.56.190 Special tax; special assessment on property acquired by public entity through eminent domain. If property subject to a special tax levied pursuant to this Code is acquired by a public entity through eminent domain proceedings, the obligation to pay the special tax shall be treated, pursuant to Section 1265.250 of the Code of Civil Procedure, as if it were a special annual assessment. For this purpose, the present value of the obligation to pay a special tax to pay the principal and interest on any indebtedness incurred by the district prior to the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code shall be treated the same as a fixed lien special assessment.

Article 3 **Proceedings To Create A Community Facilities District**

3.56.200 Institution of proceeding; request; petition; fee. Proceedings for the establishment of a community facilities district may be instituted by the legislative body on its own initiative and shall be instituted by the legislative body when any of the following occurs:

- (a) A written request for the establishment of a district, signed by two members of the legislative body, describing the boundaries of the territory which is proposed for inclusion in the area and specifying the type or types of facilities and services to be financed by the district, is filed with the legislative body.
- (b) A petition requesting the institution of the proceedings signed by the requisite number of registered voters, as specified in subdivision (d) of Section 3.56.210, is filed with the clerk of the legislative body. The petition may consist of any number of separate instruments, each of which shall comply with all of the requirements of the petition, except as to the number of signatures.
- (c) A petition requesting the institution of the proceedings signed by landowners owning the requisite portion of the area of the proposed district, as specified in subdivision (d) of Section 3.56.210, is filed with the clerk of the legislative body.
- (d) The written request filed pursuant to subdivision (a) and the petitions filed pursuant to subdivisions (b) and (c) shall be accompanied by the payment of a fee in an amount which the legislative body determines is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a district pursuant to this Code.

3.56.210 Petition; contents; findings as to requisite number of signers. A petition requesting the institution of proceedings for the establishment of a community facilities district shall do all of the following:

- (a) Request the legislative body to institute proceedings to establish a community facilities district pursuant to this Code.
- (b) Describe the boundaries of the territory which is proposed for inclusion in the district.
- (c) State the type or types of facilities and services to be financed by the district.
- (d) Be signed by not less than 10 percent of the registered voters residing within the territory proposed to be included within the district or by owners of not less than 10 percent of the area of land proposed to be included within the district. If the legislative body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the district or by the requisite number of owners of land proposed to be included within the district, that finding shall be final and conclusive.

3.56.220 Resolution of intention to establish district; time for adoption. Within 90 days after either a written request by two members of the legislative body or a petition requesting the institution of proceedings for the establishment of a community facilities district is filed with the legislative body, it shall adopt a resolution of intention to establish a community facilities district in the form specified in Section 53321 of the Act.

3.56.230 Reports and estimate of costs by responsible officers; remedial action plan for cleanup of hazardous substance; inclusion in record of hearing. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses.

If removal or remedial action for the cleanup of any hazardous substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in subdivision (c) of Section 25356.1 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, which shall be comparable to those described in subdivision (g) of Section 25356.1 of the Health and Safety Code, that the remedial action plan is not required or (c) condition financing of the removal or remedial action upon approval of a remedial action plan pursuant to Section 25356.1 of the Health and Safety Code. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

3.56.240 Expedited Hearing Procedure. If the owners of all of the land to be subject to the levy of special taxes within a proposed district, or within the territory proposed to be annexed to an existing district, file petitions with the City Clerk requesting the formation of the district or the annexation of territory to an existing district, respectively, the public hearing referred to in Section 53321(e) or 53339.3(f), as applicable, of the California Government Code may occur not less than 14 days after adoption of the resolution of intention to form or to annex territory to the district, as applicable, rather than the minimum of 30 days otherwise specified in said Sections of the California Government Code. (3546-4/02)

Article 4 **Procedures For Levying**

3.56.300 Lease or possessory interest by exempt person or entity to nonexempt person or entity; lease provisions; collection

- (a) If a public agency owning property, including property held in trust for any beneficiary,

which is exempt from a special tax pursuant to Section 53340 of the Act grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax shall, notwithstanding Section 53340 of the Act, be levied on the leasehold or possessory interest and shall be payable by the owner of the leasehold or possessory interest.

- (b) When entering into a lease or other written contract creating a possessory interest that may be subject to taxation, pursuant to subdivision (a), the public agency shall include, or cause to be included, in the contract a statement that the property interest may be subject to special taxation pursuant to this Code, and that the party in whom the possessory interest is vested may be subject to the payment of special taxes levied on the interest. Failure to comply with the requirements of this section shall not, however, invalidate the contract.
- (c) If the special tax on any possessory interest levied pursuant to subdivision (a) is unpaid when due, the tax collector may use those collection procedures which are available for the collection of assessments on the unsecured roll.

3.56.310 Actions or proceedings against levy of special tax or increase in special tax; time for commencement; time for perfection of appeal from final judgment. Any action or proceeding to attack, review, set aside, void, or annul the levy of a special tax or an increase in a special tax pursuant to this Code shall be commenced within 30 days after the special tax is approved by the voters. Any appeal from a final judgment in that action or proceeding shall be perfected within 30 days after the entry of judgment.

3.56.320 Reservation of rights; tender of full or partial payment; special tax installments or interest or penalties due or delinquent.

- (a) The legislative body may provide in the resolution issuing bonds and in documents setting forth the rights of the debtholders that it shall reserve to itself, the right and authority to allow any interested owner of property within the County, subject to the provisions of this section and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the County Treasurer in full payment or part payment of any installment of the special taxes or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender. The County Treasurer shall thereupon cancel the bond debt and shall cause proper credit therefor to be entered on the records of the district and in the office of the auditor and tax collector. If the legislative body agrees to allow bond tenders pursuant to this section [or to Section 3.56.490] the legislative body may, at its discretion, agree to distribute or direct its trustee or other agent to distribute by any means an offer to purchase bonds or other related inquiry to the holders of the bonds of the district, at the expense of the person requesting the mailing. Neither the legislative body, nor any of its officers, agents, or trustees shall be liable in any way for that distribution. (3751-11/06)
- (b) The provisions of this subdivision apply to any tender of bonds pursuant to this section by an owner of property within the County who is delinquent in paying special taxes levied by this County when due. Bonds may be tendered pursuant to this subdivision only after all of the following conditions have been satisfied: (3751-11/06)
 - (1) The delinquent lot or parcel, or possessory interest in such delinquent lot or parcel, has been offered for sale as a result of a foreclosure judgment and the minimum price required to be paid for the lot or parcel, or possessory interest in such delinquent lot or parcel, was not received.
 - (2) The bonds to be tendered to the County were obtained by the property owner, or holder of the possessory interest, only after their prior owner was presented with a tender offer or solicitation as defined in this subdivision. (3751-11/06)

- (A) For purposes of this subdivision, a “tender offer” or “solicitation” is a solicitation by any person or that person’s agent by offering circular, memoranda, tender, or solicitation, or any other document or written, oral, or electronic communication for the purchase of the bonds from their then current owner. A person includes a natural person, corporation, company, partnership, limited liability company, limited liability partnership, association, or any other entity and a “tendering party” includes any person making a tender offer for bonds.
- (B) Any tender offer or solicitation shall include all material information as required under federal and state securities laws and shall also include the following information, to the extent applicable:
- (i) The name of the tendering party.
 - (ii) An individual who can be contacted to provide further information with respect to the tender.
 - (iii) The current holdings of bonds of the district by the tendering party and its affiliates.
 - (iv) The total face amount of the bonds being solicited.
 - (v) The price or method of determining the price per one thousand dollars (\$1,000) in bonds being offered by the tendering party.
 - (vi) Whether the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, is a property owner within the district that issued the bonds.
 - (vii) Whether the present intentions of the tendering party are to use the bonds for payment of special taxes or the purchase of property (or purchase of possessory interest) at a foreclosure sale pursuant to this section or Section 3.56.490. This statement of present intentions shall not be construed to be binding on the tendering party.
 - (viii) The status of the bond redemption fund, construction fund, reserve fund, and any other funds of the district and the special tax delinquency rate of the district, all of which data shall be the most recent available from the district and, in any event, shall apply to the state of the funds after the most recent payment of principal and interest on the bonds. The district shall provide the necessary data to the property owner within 10 days of receiving a written request and may charge a reasonable fee not to exceed its actual costs of providing the data. The district shall simultaneously release the same information to the general public. The property shall also provide the percentage of the delinquency attributable to the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, for each of the three most recent fiscal years.
 - (ix) If the tendering party owns or leases property in the district that issued the bonds, the development plans for that property and an update on the current status of development of that property and of any zoning, planning, or other permits or approvals needed for development of the property to proceed.

- (x) Any other material information available to the tendering party and not generally available to the public that would significantly affect the market value of the bonds of the district.
- (C) The tendering party shall notify the legislative body of his or her intent to make a tender offer or solicitation at least simultaneously with making any offer or solicitation.
- (D) The tendering party shall provide a copy of the solicitation to the Department of Corporations prior to five working days after notifying the legislative body pursuant to subparagraph (C).
- (3) The tendering property owner or tendering possessory interest holder provides the legislative body with a negative assurance from counsel representing the property owner or tendering possessory interest holder that no misleading or other information has come to the tendering party's attention after reasonable investigation, that would lead the party providing the negative assurance to believe that the tender was in violation of federal or state securities laws.
- (4) The tendering property owner delivers to the legislative body of the district that issued the bonds subject to the tender, a certificate to the effect that the tender information is accurate in all material respects and does not omit to state a material fact necessary in order to make the statements included in the tender information not misleading, except that the certificate need not provide any assurances as to the accuracy of the information as to the bond fund balances and tax payment information provided by the district.
- (c) The provisions of this subdivision apply to any tender of bonds pursuant to this section by any owner of property within the district who is not delinquent in paying special taxes on any property within the district. A person subject to this subdivision shall be deemed to be a person whose relationship to the issuer may give him or her access, directly or indirectly, to material information about the issuer not generally available to the public, and the provisions of Section 25402 of the Corporations Code apply to any purchase or sale of securities by that person in connection with the tender transaction. For purposes of this subdivision, the "issuer" includes the district, the local agency that created the district, and any owner of property within the district. At any time prior to tendering bonds to the district pursuant to this section, any person subject to this subdivision shall deliver to the legislative body of the district a certificate that he or she has complied with this subdivision and applicable federal and state securities laws.

Article 5

3.56.400 Resolution to incur bonded indebtedness. Whenever the legislative body deems it necessary for the community facilities district to incur a bonded indebtedness, it shall, by resolution, set forth all of the following:

- (a) A declaration of the necessity for the indebtedness.
- (b) The purpose for which the proposed debt is to be incurred.
- (c) The amount of the proposed debt. The legislative body may provide for a reduction in the amount of proposed debt in compliance with the provisions of Section 53313.9 of the Act.
- (d) The time and place for a hearing by the legislative body on the proposed debt issue.

3.56.410 Inclusion of certain costs and estimated costs in proposed bonded indebtedness.

The amount of the proposed bonded indebtedness may include all costs and estimated costs

incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction, improvement or acquisition of buildings, or both; acquisition of land, rights-of-way, water, sewer, wetlands mitigation or other capacity or connection fees; lease payments for school facilities, satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to this Code; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district estimated to be due and payable within two years of issuance of the bonds; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancement costs, and printing costs.

3.56.420 Sale of bonds; appraisal of real property subject to special tax for paying debt service on bond; determination of no unusual credit risk; vote to proceed for specified public policy reasons.

- (a) The legislative body may sell bonds pursuant to this Code only if it determines prior to the award of sale of bonds that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least three times the principal amount of the bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to this Code on property within the community facilities district or a special assessment levied on property within the community facilities district. Any determination made pursuant to this subdivision shall be based upon the full cash value as shown on the ad valorem assessment roll or upon an appraisal of the subject property made in a manner consistent with the policies adopted pursuant to paragraph (5) of subdivision (a) of Section 3.56.100 by a state certified real estate appraiser as defined in subdivision (c) of Section 11340 of the California Business and Professions Code. The City Treasurer and the Finance Director may recommend definitions, standards, and assumptions to be used for these appraisals. These definitions, standards, and assumptions are advisory only, and the definitions, standards, and assumptions to be applied to appraisals will be those adopted by the local agency pursuant to paragraph (5) of subdivision (a) of Section 3.56.100. (3751-11/06)
- (b) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines that the proposed bonds do not present any unusual credit risk due to the availability of credit enhancements or for other reasons specified by the legislative body, the provisions of subdivision (a) may be disregarded.
- (c) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines by a vote of not less than four-fifths of all of its members that the proposed bond issue should proceed for specified public policy reasons, the provisions of subdivision (a) may be disregarded.

A finding and determination by the legislative body pursuant to this subdivision shall be final and conclusive upon all persons in the absence of actual fraud, and neither the legislative body nor the district shall have any liability of any kind whatsoever out of, or in connection with, any finding and determination.

3.56.430 Agreement to notify one or more parties in the event specified events occur affecting the market value of outstanding bonds; events triggering notice. The bond indenture or other bond documents may provide that the legislative body agrees to notify one or more parties, including the underwriter or other first purchaser of the bonds, an appropriate national repository for bond information approved by the Securities and Exchange Commission, or the California Debt Advisory Commission, in the event that specified events occur which may affect the market value of outstanding bonds. These events may include, but are not limited to, the following, for example:

- (a) Withdrawal of funds from any reserve fund for the bonds, such that the balance in the fund falls below a specified percentage of the amount required by bond documents.
- (b) Draw upon a letter of credit or other credit enhancement for the bonds.
- (c) Filing for bankruptcy by a developer or other owner of more than a specified percentage of the area or property value within the district.
- (d) Unforeseen discovery of toxic materials or rare and endangered plant or animal species within areas of the district proposed for development.

3.56.440 Action to foreclose liens; cumulative remedy; resolution to diligently pursue foreclosure action; collection of delinquent charges.

- (a) As a cumulative remedy, if debt is outstanding, the legislative body may, not later than four years after the due date of the last installment of principal thereof, order that any delinquent special taxes levied in whole or in part for payment of the debt, together with any penalties, interest, and costs, be collected by an action brought in the superior court to foreclose the lien of special tax.
- (b) The legislative body may, by resolution, adopted prior to the issuance of debt under this Code covenant for the benefit of debt holders to commence and diligently pursue any foreclosure action regarding delinquent installments of any amount levied as a special tax for the payment of interest or principal of any bonds that are issued, and, at any time may assign the causes of action arising from the foreclosure to a trustee or joint powers authority to do so on behalf of the debtholders. The resolution may specify a deadline for commencement of the foreclosure action and any other terms and conditions the legislative body determines reasonable regarding the foreclosure action.
- (c) Except as provided in Section 3.56.470, all special taxes, interest, penalties, costs, fees, and other charges that are delinquent at the time of the ordering of a foreclosure action shall be collected in the action. In the event that a lot or parcel of property or a possessory interest has not been sold pursuant to judgment in the foreclosure action at the time that subsequent special taxes become delinquent, the court may include the subsequent special taxes, interest, penalties, costs, fees, and other charges in the judgment or modified judgment.
- (d) For purposes of financing delinquent special taxes pursuant to Section 26220 of the California Government Code, the legislative body may act as if it were a board of supervisors.
- (e) Notwithstanding any other provision of this Code, no trustee or joint powers authority shall be obligated to accept the tender of bonds in satisfaction of any obligation arising from a delinquent special tax, although either may do so if authorized to do so by the legislative body.
- (f) An action to determine the validity of any bonds issued, any joint powers agreement entered into, and any related agreements entered into, by a joint powers agency acting pursuant to this section may be brought by the joint powers agency pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

3.56.450 Complainants; time limitations; contents of complaint. The foreclosure action shall be brought in the name of the local agency or trustee on behalf of the bondholders pursuant to Section 3.56.440, and may be brought within the time specified in Section 3.56.440. The complaint may be brief and need only include the following allegations:

- (a) That on a stated date, a certain sum of special taxes, levied against the subject property or possessory interest (describing it) pursuant to this Code, became delinquent.
- (b) On that date, bonds issued pursuant to this Code, payable in whole or in part by the subject special taxes, were outstanding.
- (c) That the legislative body or trustee has ordered the foreclosure.

3.56.460 Judgment decree; contents; amount; attorneys' fees; application of general foreclosure provisions.

- (a) Any judgment shall decree the amount of the continuing lien against each parcel or possessory interest to be foreclosed, and shall order the parcel to be sold on execution as in other cases of the sale of real property or possessory interests by process of the court except:
 - (1) Notwithstanding Section 701.545 of the Code of Civil Procedure, notice of sale of any lot or parcel or possessory interest included in the judgment may be given pursuant to Section 701.540 of the Code of Civil Procedure any time after the expiration of 20 days after the date notice of levy on the interest in real property was served on the judgment debtor or debtors, provided that the lot or parcel to be sold is not a dwelling for not more than four families and provided that all parties whose liens are extinguished by the foreclosure judgment were either defendants in the foreclosure action or, for those parties who acquired an interest in a lien on the parcel after the recording of notice of the pending foreclosure action, received constructive notice of the action.
 - (2) Whenever notice of sale may be given after the expiration of 20 days after the date notice of levy was served as provided in paragraph (1), the 30-day time period contained in subdivision (h) of Section 701.540 of the Code of Civil Procedure shall be reduced to 10 days.
 - (3) Upon proof that the lot or parcel or possessory interest to be sold is not a dwelling for not more than four families, and upon determining that all parties whose liens are extinguished by the foreclosure judgment were either defendants in the foreclosure action or, for those parties who acquired an interest in a lien on the parcel after the recording of notice of the pending foreclosure action, received constructive notice of the action, pursuant to Section 716.020 of the Code of Civil Procedure, the court shall order that paragraphs (1) and (2) apply to any judgment previously entered.
 - (4) The minimum bid amount provided in Section 3.56.470 shall apply instead of subdivision (a) of Section 701.620 of the Code of Civil Procedure.
 - (5) The local agency may bid at the price provided in Section 3.56.470 by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment. If the local agency becomes the purchaser pursuant to bid, the local agency shall pay the amount of its credit bid into the redemption fund within 24 months of the date of the foreclosure sale.
 - (6) Notwithstanding subdivision (c) of Section 701.620 of the Code of Civil Procedure, if the minimum price required to be paid for a lot of parcel pursuant to Section 3.56.470 is not obtained at a foreclosure sale, upon written request of the local agency, the levying officer shall retain the writ of sale and, provided that the writ of sale has not been returned to the court pursuant to paragraph (1) of subdivision (a) of Section 699.560 of the Code of Civil Procedure, give notice of sale pursuant to Section 701.540 of the Code of Civil Procedure without relieving on the property.

- (7) As provided elsewhere in this Code.
- (b) The judgment amount shall include reasonable attorneys' fees to be fixed by the court, together with interest, penalties, and other authorized charges and costs (all calculated up to date of judgment).
- (c) The foreclosure action shall be governed and regulated by the provisions of this Code, and also where not in conflict with this Code, by other provisions of law generally applicable to foreclosure actions.

3.56.470 Price of property or possessory interests sold. Property or possessory interests sold hereunder may not be sold for less than the amount of the judgment plus post-judgment interest and authorized costs without the consent of the owners of 75 percent by value of the outstanding bonds.

3.56.480 Computation errors; validity of special tax installment, interest or penalty. No special tax installment, interest or penalties thereon, or deed shall be held invalid for any error in computation if the error is found to be comparatively negligible, or is found to be in favor of the owner of the real property affected thereby.

3.56.490 Tender of bonds or debt; special taxes; penalties and interest; satisfaction of bid amount. Provided the legislative body permits bonds or debt to be tendered for special taxes and the penalties and interest thereon pursuant to Section 3.56.320, if the highest bid for a lot or parcel sold pursuant to a judgment of foreclosure and order of sale exceeds five thousand dollars (\$5,000) and the highest bidder elects to treat the sale as a credit transaction pursuant to subdivision (c) of Section 701.590 of the Code of Civil Procedure, the balance due as provided in that section may be paid in full or in part by tender of bonds or debt, provided, however, that bonds or debt may not be tendered for costs of foreclosure, including attorney's fees, and administrative charges incurred by the local agency with respect to removing the special taxes from the rolls of the treasurer or tax collector, or other administrative charges.

- (a) Tender of bonds or debt shall be made to the local agency within seven days of the date of the sale. The local agency shall be charged with authenticating the tender and shall, within 10 days of the date of the sale, submit a written receipt to the levying officer who conducted the sale for the amount of the bond or debt tender accepted by it.
- (b) Tender of cash or certified check or cashier's check shall be made to the levying officer within 10 days of the date of the sale.
- (c) The levying officer shall total the cash, certified checks and cashier's checks, and any agency written receipts for bonds or debt to determine if the amount of the bid, plus accruing costs and interests, has been paid. In no event shall the tendering party be entitled to receive cash or other compensation in return for all or any part of the value of a tendered bond or bonds, except for recognition of their value in satisfying the amount bid.
- (d) The tendering party shall comply with the provisions of Section 3.56.320, as applicable as if they were fully set out in this section.

3.56.500 Notice of proposed sale of bonds; contents.

- (a) The legislative body shall, no later than 30 days prior to the sale of any bonds pursuant to this article, give written notice of the proposed sale to the California Debt and Investment Advisory Commission by mail, postage prepaid, as required by Chapter 12 (commencing with Section 8855) of Division 1 of Title 2 of the California Government Code
- (b) Each year after the sale of any bonds, including refunding bonds, pursuant to this article, and until the final maturity of the bonds, the legislative body shall, not later than October 30 of each year, supply the following information to the California Debt and Investment

Advisory Commission by mail, postage prepaid:

- (1) The principal amount of bonds outstanding.
 - (2) The balance in the bond reserve fund.
 - (3) The balance in the capitalized interest fund, if any.
 - (4) The number of parcels which are delinquent with respect to their special tax payments, the amount that each parcel is delinquent, the length of time that each has been delinquent, and when foreclosure was commenced for each delinquent parcel.
 - (5) The balance in any construction funds.
 - (6) The assessed value of all parcels subject to special tax to repay the bonds as shown on the most recent equalized roll.
- (c) In addition, with respect to any bonds sold pursuant to this article, regardless when sold, and until the final maturity of the bonds, the legislative body shall notify the California Debt and Investment Advisory Commission by mail, postage prepaid, within 10 days if any of the following events occur:
- (1) The local agency or its trustee fails to pay principal and interest due on any scheduled payment date.
 - (2) Funds are withdrawn from a reserve fund to pay principal and interest on the bonds beyond levels set by the California Debt and Investment Advisory Commission.
- (d) Neither the legislative body nor the California Debt and Investment Advisory Commission shall be liable for any inadvertent error in reporting the information required by this section.